

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: Aug 2, 2006 - Marathon

Division: BOCC

Bulk Item: Yes ☐ No ☒

Department: DISTRICT FIVE

Staff Contact Person: Donna Hanson

AGENDA ITEM WORDING:

Discussion of the intent of the Sept 6, 2005, ILA between the FKAA and Monroe County.

ITEM BACKGROUND:

1. STATEMENT OF INTENT:

This agreement shall set forth commitments of the parties to work together to achieve the 2010 mandate to sewer the Florida Keys. The parties shall work together to obtain funding for wastewater treatment facilities from state and federal sources. The parties shall cooperate with each other and act in a timely manner to acquire, design, construct, and operate wastewater treatment systems throughout the unincorporated areas of Monroe County, except for the area covered by the Key Largo Wastewater District, which has its separate authority and responsibility for sewerage that area. The parties further intend that the sewerage of the Florida Keys shall be done at a reasonable cost to users.

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

TOTAL COST: N/A

BUDGETED: Yes ☐ No ☐

COST TO COUNTY: _____

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes ☐ No ☐ AMOUNT PER MONTH _____ Year _____

APPROVED BY: County Atty _____ OMB/Purchasing _____ Risk Management _____

DIVISION DIRECTOR APPROVAL: _____

Glenn Patton
COMMISSIONER GLENN PATTON

DOCUMENTATION: Included ☒ Not Required ☐

DISPOSITION: _____

AGENDA ITEM # _____

**INTERLOCAL AGREEMENT
MONROE COUNTY AND FLORIDA KEYS AQUEDUCT AUTHORITY
WASTEWATER SYSTEMS**

THIS INTERLOCAL AGREEMENT is entered into pursuant to Sec. 163.01, F.S., by and between Monroe County, a political subdivision of the State of Florida, (County), and the Florida Keys Aqueduct Authority, Inc., an independent special district. (FKAA).

WHEREAS, the Florida Legislature has identified the Florida Keys as an area of critical state concern, and has authorized actions by the County and FKAA to provide adequate wastewater treatment to protect the environment and the health, safety and welfare of landowners and persons inhabiting the Florida Keys; and

WHEREAS, the County is authorized by Sec. 125.01(1), FS, to provide, assist in providing and fund centralized wastewater treatment systems;

WHEREAS, Chap. 99-395, Sec. 6, Laws of Florida, and the County's Comprehensive Plan require that certain wastewater treatment levels be achieved by 2010, levels which can best be achieved by central wastewater treatment systems;

WHEREAS, the FKAA is authorized by Chap. 76-441, Laws of Florida, as amended, to design, construct, and operate, wastewater treatment systems;

WHEREAS, the FKAA and the County have entered into previous interlocal agreements establishing and confirming their ongoing relationship in providing wastewater facilities in the Florida Keys; and

WHEREAS, the County, by adopted resolutions, has provided funding to the FKAA for wastewater projects and shall provide additional funds to the FKAA for the administration, planning and construction of future wastewater projects in unincorporated Monroe County; and

WHEREAS, the County has deeded to the FKAA parcels of land on Conch Key, the Saddlebunch Keys and Grassy Key; and

WHEREAS, the County has demonstrated its commitment to sewerage the Keys by transferring, at no cost, to FKAA the Grassy Key parcel, for which ad valorem taxes were expended at fair market value and the parcel is to be used by FKAA to serve the City of Marathon, and has committed a maximum of \$20,000,000 to the Key Largo Wastewater Treatment District; and

WHEREAS, the Baypoint (Saddlebunch Keys) and Conch Key projects, constructed by FKAA, are soon to be operational; and

WHEREAS, the County and the FKAA intend to continue their cooperation with Governor Bush, the State Cabinet, the Department of Environmental Protection and the Department of Community Affairs to implement wastewater systems in unincorporated Monroe County by 2010; and

WHEREAS, the parties desire to further define their commitment to work together and to answer concerns raised by the State Cabinet, at a meeting of August 23, 2005, concerning an agreement dated August 17, 2005, between the parties; and

WHEREAS, the parties have been in reliance upon expressions of commitment by the Florida Department of Community Affairs of \$10,000,000 for wastewater projects for fiscal year 2005, and \$20,000,000 for fiscal year 2006, as identified in the Growth Management Plan attached to County Resolution No.039-2004, and the ability to obtain additional critical financial assistance from the State of Florida, the federal government and their agencies to achieve the purpose of this agreement; now therefore,

IN CONSIDERATION of the mutual consideration and premises set forth below, the parties agree as follows:

1. STATEMENT OF INTENT:

This agreement shall set forth commitments of the parties to work together to achieve the 2010 mandate to sewer the Florida Keys. The parties shall work together to obtain funding for wastewater treatment facilities from state and federal sources. The parties shall cooperate with each other and act in a timely manner to acquire, design, construct, and operate wastewater treatment systems throughout the unincorporated areas of Monroe County, except for the area covered by the Key Largo Wastewater District, which has its separate authority and responsibility for sewerage that area. The parties further intend that the sewerage of the Florida Keys shall be done at a reasonable cost to users.

2. RESPONSIBILITIES OF COUNTY:

2.01 The County shall own the land and infrastructure of the wastewater treatment systems acquired or constructed under this agreement, and any amendments hereto, and shall lease said assets to the FKAA as described in Section 3.08 below.

2.02 The County, in addition to funds obtained from state and federal sources, shall provide up to the limits of its bonding capacity of the infrastructure sales surtax and County's ability to levy special assessments, the funds necessary to complete all wastewater projects so that citizens do not have to pay in excess of \$4,500 per EDU in non-ad valorem special assessments. The County shall provide \$20,000,000 for the costs of acquisition, procurement, design, and construction of wastewater projects in the Lower Keys. County commits to full faith and diligence in working with the FKAA to provide funding to make costs of system development and connections for the Big Coppitt and all future projects reasonable to users. County shall have the responsibility of levying the special assessments for wastewater projects. Lower Keys projects included under this Agreement are Big Coppitt area, Cudjoe-Sugarloaf area, and Big Pine area. Other unincorporated County projects are Duck Key and Long Key.

2.03 The County Administrator shall review all procurement documents drafted by, or on behalf of, FKAA for wastewater treatment systems in the unincorporated county. The County Administrator shall make suggestions for changes as he deems in the best interest of the general public.

2.04 The County Administrator shall appoint two members of the evaluation committee should any committee be established.

2.05 The County shall convey to FKAA such easements as are necessary for the installation of sewer lines.

3. RESPONSIBILITIES OF FKAA:

3.01 The FKAA shall administer the procurement processes for the design and construction of wastewater systems in unincorporated Monroe County.

3.02 The FKAA shall develop requests for proposals (RFP) and requests for qualifications (RFQ) for the procurement of wastewater systems in unincorporated Monroe County, consistent with the procurement policies of the FKAA and applicable State statute(s). FKAA shall submit the drafts of RFP/RFQ to the County Administrator for review and input, give due consideration to any suggestions for changes, and shall advertise RFP/RFQs.

3.03 The FKAA shall accept the RFP/RFQ submissions. It is intended that contracts be awarded to the most responsive submitter, which shall not be required to be the lowest responsive bid, the most qualified responder, or other. The parties recognize that the lowest bid may not be the most effective bid. Accordingly, an evaluation committee which will comply with Sec. 286.011, F.S., may be established on an ad hoc basis for each procurement process. Should an evaluation committee be established, the Executive Director of the FKAA and the County Administrator shall each appoint two members.

3.04 The FKAA shall give due consideration to recommendations of the committee, if any, and the County Administrator. The FKAA shall award the contract.

3.05 The FKAA shall provide construction management of each project to insure its expeditious and economic completion. The FKAA authorizes the County Engineer and/or his designee to make site visits to any project under construction, and shall give due consideration to any suggestions of the County Engineer regarding an ongoing project.

3.06 The FKAA shall retain the financing authority provided in its enabling legislation.

3.07 The FKAA shall aid the County in its efforts to obtain funding by providing copies of such documents as the County needs to support its issuance of bonds or to seek Federal and State grants to assist in the funding of all said wastewater projects.

3.08 The FKAA shall lease from the County the land and infrastructure of the wastewater treatment systems acquired or constructed under this agreement and any amendments hereto. The Lease shall be irrevocable and provide absolute and unconditional authority to the FKAA to establish system development fees, rates, budgets, and rules governing operations in such manner as to be consistent with Section 4.06 of this agreement. The lease term shall be ninety-nine (99) years, ~~and renewable for an additional ninety-nine (99) years~~. The FKAA shall be responsible for the maintenance and operations of the systems leased from the County. The

parties understand and agree that the lease to be entered by the parties shall contain covenants, warranties, auditing and monitoring provisions consistent with the provisions found in the Interlocal Agreement between the County and the Key Largo Wastewater Treatment District.

3.09 The FKAA, pursuant to requirements of their enabling act, shall ensure that at least two public hearings be held in the area affected before any system development fee, rate or any other user fee is established or increased. All revenues derived from the wastewater systems by the FKAA over and above maintenance, operations, customer service, billing, and any direct costs specifically incurred to provide these services shall be used solely for the purposes of the wastewater systems, such as the payment of debt service and retirement of bonds.

3.10 This Agreement shall not apply to wastewater assets currently owned by FKAA or hereafter acquired from any other utility.

4. COOPERATION IN CARRYING OUT AGREEMENT:

4.01 The County Administrator and the FKAA Executive Director shall meet as necessary to complete the tasks set forth in this agreement. The County Administrator and the FKAA Executive Director and their staffs shall only serve in their customary capacity of fact-finding, professional advice to, and other efforts to carry out the policies of, their respective boards.

4.02 All communications and dissemination of information regarding wastewater projects shall be through the Offices of the County Administrator and the FKAA Executive Director.

4.03 The parties recognize an obligation of \$80,000,000 of bond-financing to be secured by special assessments in the unincorporated county.

4.04 The parties agree to enter into a lease consistent with this agreement in the most expeditious manner as possible.

4.05 The parties shall work together to secure sites for wastewater treatment plants in remaining lower keys no later than July 12, 2007. Attached hereto is Exhibit A setting forth a preliminary timetable for the projects.

4.06 Neither party shall take any action or omit to take necessary action, including action pertaining to rate setting, that will adversely affect the tax-exempt status of County and FKAA bonds, or the respective party's ability to issue bonds under this agreement. Each party will take such action as is reasonably requested by the other party in connection with the issuance of bonds so as to allow the other party to issue such bonds on a tax-exempt basis, including, but not limited to, executing tax certificates.

5. ESTABLISHMENT OF CERTAIN PREREQUISITES FOR EACH PROJECT

5.01 The County and the FKAA shall work together to achieve the following goal: to establish fair and equitable connection fees and user fees to fund the operation and maintenance of wastewater systems.

5.02 Projects constructed under this agreement shall conform to the Monroe County Sanitary Wastewater Master Plan.

5.03 It is recognized that some outlying areas of the Keys which are not heavily populated may not be feasibly served by a centralized wastewater and sewage system, and that Alternative Wastewater Facilities may be required to be installed to meet the mandate for adequate wastewater treatment in the Florida Keys. All Alternative Wastewater Facilities that may hereafter be constructed and operated within the Service Area of the FKAA shall conform to good utility practices, adequate service to the public, ensure adequate Wastewater Service for the Florida Keys and its citizens. FKAA shall comply with all applicable laws and rules in issuing prior approval for the use, construction, installation, or operation of new or expanded Alternative Wastewater Facilities. The FKAA shall require and enforce the use of its own Wastewater Facilities and facilities leased from County whenever and wherever they are accessible. Any Alternative Wastewater Facility must provide adequate and sufficient service to the projected territory or development.

6. INSURANCE AND HOLD HARMLESS:

6.01 The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, arising out of the activities governed by this agreement.

6.02 To the extent allowed by law, each party shall be responsible for any acts, or omissions, of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party, its officers and employees, agents and contractors, harmless from all claims demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to arising out of such actions or omissions. The purchase of the insurance does not release or vitiate either party's obligations under this paragraph.

6.03 Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the County and the FKAA in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

7. GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES:

7.01 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

7.02 In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and FKAA agree that venue will lie

in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

7.03 The County and FKAA agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

7.04 The County and FKAA agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

8. SEVERABILITY:

If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and FKAA agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

9. BINDING EFFECT:

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and FKAA and their respective legal representatives, successors, and assigns.

10. AUTHORITY:

Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and Authority action, as required by law.

11. CLAIMS FOR FEDERAL OR STATE AID:

FKAA and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement.

12. NON-DISCRIMINATION:

FKAA and COUNTY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. FKAA and County agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101- 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

13. ADJUDICATION OF DISPUTES OR DISAGREEMENTS:

13.01 County and FKAA agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

13.02 In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and FKAA agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and FKAA specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

14. COVENANT OF NO INTEREST:

County and FKAA covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this

Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

15. CODE OF ETHICS:

15.01 County and the FKAA agree that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

15.02 FKAA warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990.

16. NO SOLICITATION/PAYMENT:

The County and FKAA each warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

17. PUBLIC ACCESS:

The County and FKAA shall each allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and FKAA in conjunction with this Agreement.

18. PRIVILEGES AND IMMUNITIES:

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County and the FKAA, when performing their respective functions under this Agreement within the territorial limits of the County and the FKAA, respectively, shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the parties.

19. LEGAL OBLIGATIONS AND RESPONSIBILITIES:

Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County or the FKAA, except to the extent permitted by the Florida constitution, state statute, and case law.

20. NON-RELIANCE BY NON-PARTIES:

No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the FKAA agree that neither the County nor the FKAA or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general. Notwithstanding the preceding language, the parties hereby designate the State of Florida as a third party with the ability to enforce against the two parties the provisions hereof, based upon the State Auditor conducting management and financial audits of all sewer programs, past, present, and future, in the Florida Keys.

21. ATTESTATIONS:

FKAA and County agrees to execute such documents as the County or the FKAA may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

22. NO PERSONAL LIABILITY:

No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of either party in his or her individual capacity, and no member, officer, agent or employee of either party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

23. EXECUTION IN COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

24. SECTION HEADINGS:

Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

25. TERM OF AGREEMENT AND TERMINATION:

This Agreement shall commence on September 6, 2005, and continue for ninety-nine (99) years, or until such time as all leases entered pursuant hereto are terminated, whichever shall first occur. The parties may elect to renew this agreement at the end of its term, as set forth in the preceding sentence, for a period of ninety-nine (99) years.

26. ASSIGNMENT:

Neither party may assign this Agreement or assign any of its obligations under this Agreement without the approval of the other party, which approval shall be in writing and fully executed by both parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of FKAA and the County.

27. COMPLIANCE WITH LAWS:

This Agreement shall comply with the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this Agreement or adopted after that date.

28. CONSTRUCTION:

This Agreement has been carefully reviewed by FKAA and the COUNTY. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

29. NOTICES.

Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

County:
County Administrator
1100 Simonton Street
Key West, FL 33040

FKAA:
Executive Director
1100 Kennedy Drive
Key West, FL 33040

30. FULL UNDERSTANDING:

This Agreement is the parties' final mutual understanding with respect to any projects constructed in the future. It replaces any earlier agreements or understandings, whether written or oral, with respect to any projects constructed in the future. This Agreement cannot be modified or replaced except in a written amendment duly executed by both parties.

31. EFFECTIVE DATE:

This Agreement will take effect on the 6th day of Sept, 2005.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, FLORIDA

(SEAL) ATTEST:
DANNY L. KOLHAGE, CLERK

By: [Signature]
Deputy Clerk

By: [Signature]
Mayor

THE FLORIDA KEYS AQUEDUCT
AUTHORITY

(SEAL) ATTEST:
By: [Signature]
Clerk

By: [Signature]
Chairman

Approved as to Form
[Signature] 9/06/05